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(1)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

CRIMINAL APPEAL NO 286/283/2006

APPELLANT (IN JAIL) : B. Mohan Acharya S/o Harikrishna Acharya aged about 19 years R/o Shivaji Nagar Lal Babu Kirana Stores Ke Pass khrsipar Thana – Chhawani Dsit. Durg (C.G.)

3503/07

Filed on 20/9/06

by Shri Ajay Kaul Advocate

R to D.R. (J) 9/29/06

VERSUS

RESPONDENT : State of Chhattisgarh

CERTIFIED COPY 20.9.06 ASSTT. REGR to A.G. BILASPUR

APPEAL UNDER SECTION 374 OF CODE OF RIMINAL PROCEDURE 1973

(47)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri **DILIP RAOSAHEB DESHMUKH, J.**

Criminal Appeal Number-286/2006

B. Mohan Aacharya

Vs.

State of Chhattisgarh

Criminal Appeal Number-960/2004

Paramjeet @ Pamme

Vs.

State of Chhattisgarh

Post for Order today.

Sd/-
Dilip Raosaheb Deshmukh
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri **DILIP RAOSAHEB DESHMUKH, J.**

Criminal Appeal Number-286/2006

B. Mohan Aacharya

Vs.

State of Chhattisgarh

Criminal Appeal Number-960/2004

Paramjeet @ Pamme

Vs.

State of Chhattisgarh

PRESENT: -

Shri Arun Kochar, learned counsel for the appellant **B. Mohan Acharya.**
Shri Pankaj Agrawal, learned counsel for the appellant **Paramjeet @Pamme.**
Shri Parag Kotecha, Panel Lawyer for the State.

J U D G M E N T
(Delivered on 15 -06-2006)

This Common judgment shall govern Criminal Appeal No.286/2006 preferred by B. Mohan Aacharya and Criminal Appeal No.960/2004 preferred by Paramjeet @ Pamme. Both the appellants were convicted under Section-353, 307 and 427 I.P.C. read with Section-34 of IPC and were sentenced to undergo rigorous imprisonment for 1 year and to a fine of Rs.500/- under Section-353 read with Section-34 of IPC, to rigorous imprisonment for 5 years and to a fine of Rs. 1,000/- under Section-307 read with Section-34 of IPC and to rigorous imprisonment for 1 year and to a fine of

Rs.500/- under Section-427 read with Section-34 of IPC by Shri L.R.Thakur, learned VIIIth Additional Sessions Judge, (F.T.C.), Durg vide judgment dated 04-11-2004 delivered in Sessions Trial No.107/2004.

2. The factual matrix in brief is that on 01-02-2004 at 00.10 Hrs. Constable Padum lal Sahu No.557 PW-1 and Constable Hitesh Kumar No.260 PW-2 who were on wireless duty at Police Outpost, Anjora, received information from Bhilai Police Control Room that one white coloured Tata Sumo Vehicle bearing Registration No.C.G.-04-B/5739 carrying illicit liquor and driven by B. Mohan Rao had fled after being intercepted by the police and had to be intercepted at Police outpost, Anjora. On receiving this information, Constable Padum lal Sahu PW-1 pulled down the barrier at Police Outpost, Anjora. Soon thereafter, the aforesaid vehicle was seen coming towards the barrier and was signaled to a halt. However, the driver of the aforesaid vehicle while attempting to crush Constable Padum lal Sahu PW-1 underneath the vehicle broke the barrier and fled with the Tata Sumo Vehicle.

3. F.I.R. was registered at Police Outpost, Anjora on 01-02-2004 at 00.45 Hrs. vide Ex.P-1 and thereafter at Police Station-Pulgaon at 02.30 Hrs. vide Ex.P-2. Assistant Sub Inspector Pramod Rusia Incharge of Police Outpost, Anjora PW-8 seized the broken glass particles of the front screen of the Tata Sumo Vehicle lying under the barrier vide Ex.P-3 at 11.00 Hrs. on 01-02-2004. Tata Sumo Vehicle bearing Registration No.C.G.-04-B/5739 with its front glass and right indicator light broken was seized on 01-02-2004 at 12-45

Hrs. vide Ex.P-4 from appellant B. Mohan Aacharya. Spot map was prepared by Assistant Sub Inspector Pramod Rusia vide Ex.P-9 on 01-02-2004 and by Patwari S. R.Baghel PW-5 on 25-02-2004. After completion of investigation, both the appellants were prosecuted under Sections-353, 427 and 307 I.P.C. read with Section-34 of IPC.

4. Both the appellants abjured the guilt. The prosecution examined as many as 9 witnesses. No evidence in defence was led by the appellants. Relying upon the evidence led by the prosecution, the learned trial judge convicted and sentenced the appellants as aforesaid in para-1. (Supra)

5. Shri Arun Kochar, learned counsel for the appellant B. Mohan Aacharya and Shri Pankaj Agrawal, learned counsel for the appellant Paramjeet @ Pamme have assailed the impugned judgment on the ground that there is not even an iota of evidence to prove the guilt of the appellants under Section-307 of IPC. It was contended that the evidence led by the prosecution created a serious doubt as to who was driving the vehicle at the time of the alleged incident. It was also contended that presence of Paramjeet @ Pamme inside the Tata Sumo Vehicle at the time of incident was extremely doubtful. Both the learned counsel emphatically argued that the broken barrier had also not been seized by the police. Lastly, it was contended that the learned trial Judge erroneously drew an inference of guilt against the appellants on the basis of their reply to the notice under Section-91 of Cr.P.C. which could, in no case, form the basis under law to convict the appellants. On the other hand, Shri Parag Kotecha, learned Panel

Lawyer appearing for the State argued in support of the impugned judgment.

6. Having considered rival submission, I have perused the record minutely. Constable Padum lal Sahu PW-1 in para-7 of his testimony stated that he was on wireless set duty at the time of occurrence. In para-11 of his testimony, he has also stated that he did not see as to who was driving the Tata Sumo Vehicle. It is pertinent to note that in para-11 of his testimony he has clearly stated that City Superintendent of Police, Durg and Flying Squad were closely chasing the Tata Sumo Vehicle and after the occurrence City Superintendent of Police had gone to the Police Outpost where he had informed City Superintendent of Police that the Tata Sumo Vehicle did not stop at Police outpost, Anjora and on such information City Superintendent of Police, Durg immediately left towards Somni. This statement by itself creates a serious dent in the prosecution story and makes the entire prosecution story highly doubtful. It clearly shows that at the time of the alleged occurrence Constable Padum lal Sahu was on wireless duty at Police Outpost not at the barrier. It also raises a serious doubt that the entire prosecution case is false and has been concocted.

7. It is also pertinent to note that neither Constable Padum lal Sahu PW-1 nor Constable Hitesh Kumar PW-2 stated that any attempt was made to crush Padum lal Sahu under the Tata Sumo Vehicle. In para-6 of his testimony he has admitted that he had seen only one person in the said vehicle. In cross examination, he has emphatically asserted the same statement. Assistant Sub Inspector S.R.Sahu

PW-9 who was closely chasing the Tata Sumo Vehicle also did not state that any attempt was made by the driver of Tata Sumo Vehicle to crush the Constable Padum lal Sahu PW-1. He simply stated that the driver of the Tata Sumo Vehicle broke the barrier in front of the Anjora Police Outpost and fled with the vehicle. Thus, the entire prosecution story that an attempt was made to crush Constable Padum lal Sahu PW-1 under the Tata Sumo Vehicle when he signaled it to a halt while standing at the barrier is rendered doubtful.

8. F.I.R. Ex.P-1 registered at Police Outpost, Anjora immediately after the occurrence and Ex.P-2 registered at P.S. Pulgaon soon thereafter shows that B. Mohan Aacharya was driving the Tata Sumo Vehicle which had fled towards Rajnandgaon. There is no mention that Paramjeet @ Pamme or any other person was accompanying the driver. Assistant Sub Inspector Pramod Rusia PW-8 admitted that appellant Paramjeet @ Pamme was arrested on 27-02-2004. Assistant Sub Inspector S. R. Sahu PW-9 has stated that during investigation it came to light that appellant Paramjeet @ Pamme was driving the Tata Sumo Vehicle and had escaped when the Tata Sumo Vehicle was finally intercepted at Rajnandgaon. A perusal of the record clearly shows that notice under Section-91 of Cr.P.C. was given to both the appellants to disclose what was being carried in the aforesaid vehicle at the time of occurrence and who was driving the vehicle. A perusal of the reply given by the appellants to the notice in their own handwriting leaves no room for any doubt that it was got written per force by the Police from the appellants. In any case, it could not form the basis for convicting the appellants.

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9. The evidence led by the prosecution does not establish that the appellant Paramjeet @ Pamme was driving the Tata Sumo Vehicle at the time of occurrence. While Assistant Sub Inspector S.R.Sahu PW-9 has stated in para-2 of his testimony that Paramjeet @ Pamme fled away when the vehicle was intercepted at Police Kotwali, Rajnandgaon, Constable Padum lal Sahu PW-1 has contradicted this by stating that only one person was sitting inside the Tata Sumo Vehicle who was perhaps B. Mohan Aacharya. Constable Hitesh Kumar PW-2 has categorically stated that in para-6 of his testimony that he had seen only one person in the Tata Sumo Vehicle and no person besides the driver was sitting in the Vehicle. No explanation was given by the Assistant Sub Inspector Pramod Rusia PW-8 for not affecting the seizure of the broken barrier which also renders the prosecution story doubtful. In para-12 of his testimony he has further stated that investigation revealed that the appellant B. Mohan Aacharya was not driving the Tata Sumo Vehicle. In the light of the above highly contradictory evidence the testimony of Assistant Sub Inspector S.R.Sahu PW-9 that the appellant Paramjeet @ Pamme had fled while Tata Sumo Vehicle was intercepted at Police Station-Kotwali, Rajnandgaon becomes extremely doubtful.

10. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the entire prosecution story is highly doubtful and conviction of the appellants under Sections-353, 427 and 307 read with Section-34 of IPC and the sentences awarded thereunder by the learned trial Judge is liable to be set aside.

11. Consequently, both Cr. Appeal No.286/2006 & Cr. Appeal No.960/2004 are allowed. Conviction of the appellants under Sections-353, 427 and 307 read with Section-34 of IPC and the sentences awarded thereunder by the learned trial Judge are set aside. The appellants are acquitted of all charges. Fine if paid, shall be refunded to the appellants.

Sd/-
Dilip Raosaheb Deshmukh
Judge